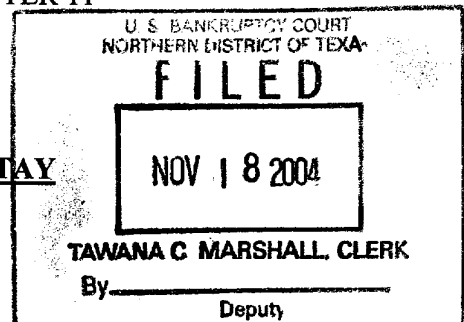


**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In Re:	§	CASE NO. 04-35113
	§	
TOP CONCEPTS, INC.	§	CHAPTER 11
	§	
(Tax I.D. No. 05-0824710),	§	
Debtors.	§	

MOTION TO LIFT AUTOMATIC STAY

TO THE HONORABLE JUDGE OF SAID COURT:



COMES NOW, Turner Construction Company of Texas, Movant herein, and makes and files this Motion to Lift Automatic Stay, and in support thereof would respectfully show unto this Court the following:

1. This Motion is brought pursuant to Sections 361 and 362 of the Bankruptcy Code for relief from the automatic stay and for adequate protection.
2. The Debtor, Top Concepts, Inc., has filed its voluntary petition herein, has remained in possession of its property, and has continued to operate its business.
3. Top Concepts, Inc., is engaged generally in the business of construction, roofing materials and repair.
4. Turner Construction Company of Texas is the holder of a claim against Debtor, Top Concepts, Inc., based upon Debtor Top Concepts, Inc.'s involvement in suit as a Defendant along with Turner Construction Company of Texas, and a number of other subcontractors involved in the Christus St. Joseph Pavilion project, for alleged breach of contract, and negligence.
5. As a result of the above and foregoing, Cross-Plaintiff in this matter, Turner Construction Company of Texas, filed a cross-action against Debtor Top Concepts, Inc. in the

District Court of Harris County, Texas, 281st Judicial District, Cause No. 2003-31315, and styled *Christus St. Joseph Hospital v. Turner Construction Company of Texas, Elmore Interest, Inc., L.S. Decker, Inc., Ra-Mar Sheet Metal, Inc., Veazey Construction Corporation, and Top Concepts, Inc.*, a copy of which is attached as Exhibit "A" and is incorporated by reference as if fully set forth herein. Herein, Top Concepts filed its Suggestion of Bankruptcy in the 281st Judicial District Court, a copy of which is attached as Exhibit "B" and is incorporated by reference as if fully set forth herein.

6. Based upon information and belief, Turner Construction Company of Texas would represent that Top Concepts, Inc., is fully insured for all damages arising as a result of the actions or omissions set forth in the attached third-party petition. Turner Construction Company of Texas does not have and Top Concepts, Inc., has not provided or offered adequate protection for Turner Construction Company of Texas' rights with regard to its claim against Top Concepts, Inc.'s insurer and Top Concepts, Inc., is incapable of providing Turner Construction Company of Texas with adequate protection of its interest as set forth above.

7. Turner Construction Company of Texas will suffer irreparable damage as a result of the injuries it has incurred by way of Top Concepts, Inc.'s actions and/or omissions, unless this Court orders that the stay be lifted, thereby allowing Turner Construction Company of Texas to pursue its cause of action against Top Concepts, Inc.'s insurer and the parties at interest in the aforementioned suit.

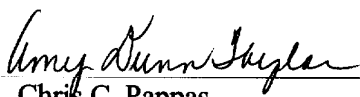
8. Top Concepts, Inc., has no equity in the insurance policy referred to herein and the same is not essential for reorganization of Top Concepts, Inc.

WHEREFORE, PREMISES CONSIDERED, Movant, TURNER CONSTRUCTION COMPANY OF TEXAS, respectfully prays: (1) that the stay pursuant to 11 U.S.C. § 362(a)(1)

be modified to permit Turner Construction Company of Texas, to pursue its action against Top Concepts, Inc.'s insurers; (2) that Top Concepts, Inc. be required, if it has not already, to produce all insurance agreements and/or policies of insurance under which any person or insurance company may be liable to satisfy all or part of any judgment rendered in the lawsuit referred to herein; and (3) that Turner Construction Company of Texas have such other and further relief, both general and special, at law or in equity as is just.

Respectfully submitted,

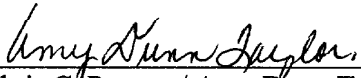
GODWIN GRUBER, L.L.P.

By: 
Chris C. Pappas
State Bar No. 15454300
Amy Dunn Taylor
State Bar No. 19682400
5 Houston Center
1401 McKinney Street, Suite 2700
Houston, Texas 77010-4034
Ph: (713) 425-7400
Fax: (713) 425-7700

ATTORNEYS FOR MOVANT,
TURNER CONSTRUCTION COMPANY
OF TEXAS

CERTIFICATE OF SERVICE

I do hereby certify a true and correct copy of the above and foregoing document has been forwarded to all the parties on the Master Service List as well as to all known counsel in the underlying matter by first class mail, telecopy, certified mail and/or hand delivery, return receipt requested, on the 17th day of November, 2004.



Chris C Pappas / Amy Dunn Taylor

Exhibit "A"

11-11-03

Cause No. 2003-31315

CHRISTUS ST. JOSEPH HOSPITAL	§	IN THE DISTRICT COURT OF
	§	
v.	§	
	§	
TURNER CONSTRUCTION COMPANY	§	HARRIS COUNTY, TEXAS
OF TEXAS, ELMORE INTEREST,	§	
INC., L.S. DECKER, INC., RA-MAR	§	
SHEET METAL, INC., VEAZEY	§	
CONSTRUCTION CORPORATION,	§	
and TOP CONCEPTS, INC.	§	281ST JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

Plaintiff CHRISTUS St. Joseph Hospital brings this suit against defendants Turner Construction Company of Texas, Elmore Interest, Inc., L.S. Decker, Inc., Ra-Mar Sheet Metal, Inc., Veazey Construction Corporation, and David R. Brecht d/b/a Top Concepts, Inc., and pleads as follows:

Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190 and affirmatively pleads that it is seeking monetary relief of more than \$50,000.

Parties

2. Plaintiff CHRISTUS St. Joseph Hospital ("St. Joseph Hospital") is a non-profit provider of health care services located in Houston, Harris County, Texas.

3. Defendant Turner Construction Company of Texas ("Turner") is a Texas corporation located at 4263 Dacoma, Houston, Texas 77092. Turner has appeared herein.

4. Defendant Elmore Interest, Inc., formerly known as Admiral Glass & Mirror ("Admiral"), is a Texas corporation located at 118 South Iowa, League City, Texas 77573. Admiral has been served with process through its registered agent Les Craft, 6655 Polk Street, Houston, Texas 77011, but has not appeared herein.

5. Defendant L.S. Decker, Inc. ("Decker") is a Texas corporation located at 1706 Seamist, Suite 590, Houston, Texas 77008. Decker has appeared herein.

6. Defendant Ra-Mar Sheet Metal, Inc. ("Ra-Mar") is a Texas corporation located at 4011 Pinemont, Houston, Texas 77018. Ra-Mar has appeared herein.

7. Defendant Veazey Construction Corporation ("Veazey") is a Texas corporation located at 7133 Appleton Street, Houston, Texas 77022. Veazey has appeared herein.

8. Defendant David R. Brecht d/b/a Top Concepts, Inc. ("Top Concepts") is a Texas corporation located at 13436 McGrath Rd., Houston, Texas 77047-4502. It may be served with process through its registered agent, David R. Brecht, 13436 McGrath, Houston, Texas 77047.

Jurisdiction and Venue

9. Jurisdiction is appropriate in this Court because the damages sought are within the jurisdictional limits of this court.

10. Venue is appropriate in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) because the events that give rise to the claim occurred in Harris County.

Statement of Background Facts

11. On December 3, 1996, St. Joseph Hospital and Turner entered into a Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum (the "Agreement"). Under the Agreement, Turner was to construct an "Ambulatory Services Facility" on the city block bounded by Calhoun, Austin, LaBranch, and Jefferson Streets in downtown Houston. This building became known as the St. Joseph Hospital Pavilion (the "Pavilion"). The construction of the Pavilion was completed on October 31, 1998.

The Pavilion now houses critical care services, surgical services, diagnostic imaging, admitting and registration services, endoscopy, and sterile processing.

12. In June 2001, the Houston area experienced a devastating storm, Tropical Storm Allison. This storm revealed for the first time structural problems with the Pavilion. The problems were evident due to water that infiltrated the Pavilion and was present on ceiling fixtures and on and under window sills. The excessive moisture also resulted in problems with mold formation. These problems were a result of the Pavilion's substandard original construction and resulted in water infiltration and damage in the Pavilion.

13. St. Joseph Hospital immediately undertook to investigate these water infiltration problems and determine how the Pavilion building envelope had been compromised. The Pavilion building envelope was found to have a compromised wall system. Observations of the wall system included the following:

- a) damaged flashings containing burn and screw holes;
- b) construction details that deviated from architectural details and represented unsound building practices; and
- c) incomplete and uncoordinated details and installation.

These observed problems with the wall system contributed to or caused the water infiltration damages experienced by the Pavilion.

14. The Pavilion building envelope was also found to have a compromised roof system. Observations of the roof system included the following:

- a) damage due to maintenance of cooling towers;
- b) inconsistencies in parapet coping materials; and
- c) incomplete overflow installation.

These problems with the roof system contributed to or caused the water infiltration damages experienced by the Pavilion.

15. As a result of the water damage, St. Joseph Hospital was forced to retain consultants and contractors to repair the extensive damage and perform remedial work throughout the Pavilion to prevent the occurrence of future water infiltration and damage. Weekly progress meetings were held throughout that process. Those meetings were attended by Turner, and each step of the repair process was vetted and approved by all in attendance, including Turner.

16. As a result of the investigation, each of the defendants' work was called into question on the original construction of the Pavilion. Turner, as the general contractor, was responsible for overall construction. Turner's subcontractors (and work called into question) included the following: Admiral (glass and glazing), Decker (waterproofing), Ra-Mar (sheet metal), Veazey (masonry), and Top Concepts.

17. St. Joseph Hospital now seeks from the defendants full reimbursement of the out-of-pocket costs and damages that resulted from the defendants' inadequate, substandard, and negligent work and resulting damage to the Pavilion.

**First Cause of Action
(Breach of Contract)**

18. The facts set out above demonstrate that the defendants have breached their contractual obligations to plaintiff, resulting in significant money damages to Plaintiff. Specifically, defendants must pay plaintiff for all costs incurred by plaintiff to repair substandard construction performed in violation of defendants' contractual obligations.

**Second Cause of Action
(Negligence)**

19. The defendants owed plaintiff a legal duty. Through their actions, defendants breached their duties to plaintiff. Those breaches proximately caused plaintiff's damages.

**Third Cause of Action
(Attorneys' fees)**

20. Plaintiff is entitled to recover attorneys' fees pursuant to TEX. CIV. Prac. & REM. CODE § 38.001. Plaintiff has employed the undersigned attorneys to file this suit and agreed to pay reasonable and necessary fees to prosecute its suit to its conclusion, including any appeals to the Court of Appeals and the Texas Supreme Court.

Jury Demand

21. St. Joseph Hospital demands a jury trial on all issues of fact in this suit.

Prayer

22. Plaintiff prays that the Court enter judgment awarding plaintiff damages against defendants, and awarding plaintiff its costs of suit, interest, and attorneys' fees and all other relief to which it is justly entitled.

Respectfully submitted,

YETTER & WARDEN, L.L.P.

By: 

Eric P. Chenoweth
State Bar No. 24006989
909 Fannin, Suite 3600
Houston, Texas 77010
(713) 632-8000
(713) 632-8002 (Fax)

ATTORNEYS FOR PLAINTIFF
CHRISTUS ST. JOSEPH HOSPITAL

Certificate of Service

I hereby certify that on this 11th day of November, 2003, a true and correct copy of the above and foregoing pleading was forwarded by facsimile to all counsel of record as follows:

Cindy A. Garcia
The Garcia Law Firm, P.C.
201 North 1st Street
Harlingen, Texas 78550

W. Gene Human, Jr.
Three Riverway, Suite 1800
Houston, Texas 77056

David P. Grabowski
Grabowski & Thompson, L.L.P.
10370 Richmond Avenue, Suite 1338
Houston, Texas 77042

Chris C. Pappas
Dunn, Kacal, Adams,
Pappas & Law, P.C.
One Riverway, Suite 1200
Houston, TX 77056

Marc J. Wojciechowski
Wojciechowski & Associates, P.C.
17447 Kuykendahl Rd., Suite 200
Spring, Texas 77379



Eric Chenoweth

Exhibit "B"

JUN/29/2004/TUE 04:10 PM

P. 002/009

O'CONNELL & BENJAMIN, L.L.P.
ATTORNEYS AND COUNSELORS
153 TREELINE PARK, SUITE 200
SAN ANTONIO, TEXAS 78209

E-MAIL: obclp@oonben.com

TELEPHONE (210) 824-0000
FACSIMILE (210) 824-0000

June 29, 2004

Via Certified Mail No. 7003 2260 0003 9096 2933

Mr. Charles Bacarisse
Harris County District Clerk
400 Civil Courts Building
301 Fannin Street
Houston, Texas 77002

Re: Cause No. 2003-31315; *Christus St. Joseph Hospital v. Turner Construction Company of Texas, Elmore Interest, Inc., L.S. Decker, Inc., RA-MAR Sheet Metal, Inc., Veazey Construction Corporation and Top Concepts, Inc.*; In the 281st Judicial District Court of Harris County, Texas
Our File No. 417-001

Dear Mr. Bacarisse:

Enclosed for filing in the above-referenced cause of action is the original and one copy of Top Concepts, Inc.'s Suggestion of Bankruptcy.

Please mark the enclosed copy with the date and time of filing (which, pursuant to Rule 5 of the Texas Rules of Civil Procedure, is the date of mailing - June 29, 2004) and return the same to our office in the enclosed self-addressed, stamped envelope.

Thank you very much for your time and assistance in this matter.

Very truly yours,

O'CONNELL & BENJAMIN, L.L.P.

By: 
Dan Vana

DPB/mm
Encl.

cc: *Via Facsimile*
Mr. Ronald L. Bair

JUN/29/2004/TUE 04:10 PM

P. 003/009

Mr. Eric P. Chenoweth
Ms. Cindy Garcia
Mr. John Engvall, Jr.
Mr. W. Gene Human, Jr.
Mr. David P. Grahowski
Mr. Ronald E. Hood
Mr. Chris C. Pappas
Mr. Marc J. Wojciechowski

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P. 004/009

CAUSE NO. 2003-31315

CHRISTUS ST. JOSEPH

V.

TURNER CONSTRUCTION COMPANY
OF TEXAS, ELMORE INTEREST, INC.,
J. S. DECKER, INC., RA-MAR SHEET
METAL, INC., VHAZEY
CONSTRUCTION CORPORATION AND
TOP CONCEPTS, INC.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

281ST JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

TOP CONCEPTS, INC.'S SUGGESTION OF BANKRUPTCY

TO THE HONORABLE JUDGE OF SAID COURT:

1. On May 3, 2004, CEI Roofing, Inc. and its affiliated debtors, including Top Concepts, Inc., and debtors in possession (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Petition"), Case No. 04-35113, pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Debtors' Bankruptcy Cases").
2. A true and correct copy of the face page of the Bankruptcy Petition(s) filed by the Defendant(s) Debtor(s) is attached hereto as Exhibit "A".
3. Pursuant to the provisions of Section 362(a)(1) of the United States Bankruptcy Code, the filing of the Bankruptcy Petition operates to stay all entities from the commencement or continuation of all judicial, administrative, or other actions or proceedings against the Debtors (i) that were or could have been commenced before the commencement of the Debtors' Bankruptcy Cases, or (ii) to recover any claims against the Debtor that arose before the commencement of the Debtors' Bankruptcy Cases. See 11 U.S.C. § 362(a)(1). Further, Section 362 operates to stay any act to obtain possession property of the estates or to exercise control over property of the estates.

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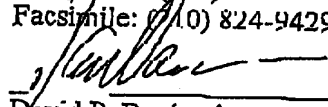
P. 005/009

4. The automatic stay of Section 362 applies to the instant litigation.

Dated June 29th, 2004.

Respectfully submitted,

O'CONNELL & BENJAMIN, L.L.P.
153 Treeline Park, Suite 200
San Antonio, Texas 78209
Telephone: (210) 824-0009
Facsimile: (210) 824-9429



David P. Benjamin
State Bar No. 02134375
Dan Vana
State Bar No. 20435750

ATTORNEYS FOR TOP CONCEPTS, INC.

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P. 006/009

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded via facsimile on this the 29th day of June 2004, to the following counsel:

Mr. Ronald L. Bair
The Bair Law Firm
523 North Sam Houston Parkway, E., Suite 600
Houston, Texas 77060-4036

Mr. Eric P. Chenoweth
Yetter & Warden, L.L.P.
909 Fannin, Suite 3600
Houston, Texas 77010.

Ms. Cindy Garcia
The Garcia Law Firm, P.C.
201 North 1st Street
Harlingen, Texas 78550

Mr. John Engvall, Jr.
Engvall & Hlavinka, L.L.P.
2603 Augusta, Suite 1200
Houston, Texas 77057-5639

Mr. W. Gene Human, Jr.
Three Riverway #1800
Houston, Texas 77056

Mr. David P. Grabowski
Grabowski & Thompson, L.L.P.
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Houston, Texas 77042

Mr. Ronald E. Hood
Cokinos, Bosien & Young
2919 Allen Parkway, Suite 1500
Houston, Texas 77019

Mr. Chris C. Pappas
Dunn, Kacal, Adams, Pappas & Law, P.C.
One Riverway, #1200
Houston, Texas 77056

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P. 007/009

Mr. Marc J. Wojciechowski
Wojciechowski & Associates, P.C.
17447 Knykendale Rd., #200
Spring, Texas 77379



David P. Benjamin

JUN/29/2004/TUE 04:11 PM

P. 008/009

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION		VOLUNTARY PETITION
Name of Debtor (If individual, enter Last, First, Middle) Top Concepts, Inc.		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Soc. Sec./Tax I.D. No. (If more than one, state all): 85-0826710		Rev. Sec./Tax I.D. No. (If more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code): 18424 and 13436 McQuarrie Houston, TX 77057		Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business: Harris County, TX		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (If different from street address):		Mailing Address of Joint Debtor (If different from street address):
Location of Principal Assets of Business Debtor (If different from address listed above):		
INFORMATION REGARDING DEBTOR (Check applicable boxes) <input checked="" type="checkbox"/> Debtor has been married or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> Debtor is a partnership, estate, trust, or other entity.		
<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Corporate <input type="checkbox"/> Partnership <input type="checkbox"/> Other		<input type="checkbox"/> CHAPTER 7 <input type="checkbox"/> CHAPTER 11 <input type="checkbox"/> CHAPTER 12 <input type="checkbox"/> CHAPTER 13 <input type="checkbox"/> SEC. 304-CASE PETITION FOR FOREIGN RECEIVING
<input type="checkbox"/> Consumer/Non-Consumer <input type="checkbox"/> Business		<input type="checkbox"/> Filing Fee (Check one box) <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only) <input type="checkbox"/> Must attach signed application for the court's consideration certifying that the debtor is unable to pay her debts in full except in installments. Rule 1009(b). See Official Form No. 3.
<input type="checkbox"/> Chapter 11 Small Business (Check all boxes that apply) Debtor is a small business as defined by 11 U.S.C. § 101 Debtor is and claims to be conducting a small business under 11 U.S.C. § 1181(a)(1)(B)		THIS SPACE FOR COURT USE ONLY
<input type="checkbox"/> Debtor certifies that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		
Estimated Number of Creditors: 1-15 <input type="checkbox"/> 16-25 <input type="checkbox"/> 26-50 <input type="checkbox"/> 51-100 <input type="checkbox"/> 101-200 <input type="checkbox"/> 201-500 <input type="checkbox"/> 501-1000 <input type="checkbox"/> 1000+ <input type="checkbox"/>		
Estimated Assets: \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$250,000 <input type="checkbox"/> \$250,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1,000,000 <input type="checkbox"/> \$1,000,001 to \$5,000,000 <input type="checkbox"/> \$5,000,001 to \$10,000,000 <input type="checkbox"/> \$10,000,001 to \$50,000,000 <input type="checkbox"/> \$50,000,001 to \$100,000,000 <input type="checkbox"/> More than \$100,000,000 <input type="checkbox"/>		
Estimated Liabilities: \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$250,000 <input type="checkbox"/> \$250,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1,000,000 <input type="checkbox"/> \$1,000,001 to \$5,000,000 <input type="checkbox"/> \$5,000,001 to \$10,000,000 <input type="checkbox"/> \$10,000,001 to \$50,000,000 <input type="checkbox"/> \$50,000,001 to \$100,000,000 <input type="checkbox"/> More than \$100,000,000 <input type="checkbox"/>		

VOLUNTARY PETITION - Page 1
#39003,0006 WEST 5585067-01

EXHIBIT
"A"

ELECTRONICALLY FILED
Akin Gump Strauss Hauer & Feld LLP
C. Gibbs 5/3/04

~~VOLUNTARY SURRENDER - Page 2~~
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P. 001/009

O'CONNELL & BENJAMIN, L.L.P.
ATTORNEYS AND COUNSELORS
152 TREELINE PARK, SUITE 200
SAN ANTONIO, TEXAS 78209

CCP

21522-9

JUN 30 2004

E-MAIL: obc@oconnellben.com

TELEPHONE (210) 524-0009
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TELECOPY TRANSMITTAL

DATE: June 29, 2004 FILE NO.: 417-001
FROM: Dan Vana OPERATOR: Mcghan
TO: Mr. Chris C. Pappas FAX NUMBER: (713) 529 8161
TO: Mr. Eric P. Chenoweth FAX NUMBER: (713) 632-8002
TO: Ms. Cindy Garcia FAX NUMBER: (956) 412-7105
TO: Mr. John Engvall, Jr. FAX NUMBER: (713) 787-0070
TO: Mr. W. Gene Human, Jr. FAX NUMBER: (713) 850-1345
TO: Mr. David P. Grabowski FAX NUMBER: (713) 267-8369
TO: Mr. Ronald E. Hood FAX NUMBER: (713) 535-5533
TO: Mr. Marc J. Wojciechowski FAX NUMBER: (281) 999 1955
TO: Mr. Ronald L. Bair FAX NUMBER: (713) 868-9444
TO: _____ FAX NUMBER: _____

NUMBER OF PAGES, INCLUDING THIS PAGE: 9

MESSAGE: Please see attached

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